

INC. (“Defendant”), in negligently and knowingly contacting Plaintiff on Plaintiff’s cellular telephone, in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq., (“TCPA”), thereby invading Plaintiff’s privacy. Plaintiff alleges as follows upon personal knowledge as to herself and her own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by her attorneys.

JURISDICTION AND VENUE

2. Jurisdiction is proper under 28 U.S.C. § 1332 because Plaintiff seeks up to \$1,500 in damages for each call in violation of the TCPA, which, when aggregated among a proposed class number in the tens of thousands, exceeds the \$5,000,000 threshold for federal court jurisdiction. Further, Plaintiff alleges a national class, which will result in at least one class member belonging to a different state than that of Defendant, providing jurisdiction under 28 U.S.C. Section 1332. Therefore, both elements of diversity jurisdiction under the Class Action Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.
3. Venue is proper in the United States District Court for the Central District of California pursuant to 18 U.S.C. § 1391(b) and 1441(a) because Defendant is subject to personal jurisdiction in the County of Los Angeles, State of California.

PARTIES

4. Plaintiff is, and at all times mentioned herein was, a citizen and resident of the State of California. Plaintiff is, and at all times mentioned herein was, a “person” as defined by 47 U.S.C. § 153 (10).
5. Plaintiff is informed and believes, and thereon alleges, that Defendant is, and at all times mentioned herein was, a corporation whose primary

1 corporate address is in California. Defendant, is and at all times mentioned
 2 herein was, a corporation and is a “person,” as defined by 47 U.S.C. § 153
 3 (10). Defendant provides transportation services to tens of thousands of
 4 consumer nationwide. Plaintiff alleges that at all times relevant herein
 5 Defendant conducted business in the State of California and in the County
 6 of Los Angeles, within this judicial district.

7 **FACTUAL ALLEGATIONS**

- 8
- 9 6. At all times relevant, Plaintiff was a citizen of the State of California.
 10 Plaintiff is, and at all times mentioned herein was, a “person” as defined by
 11 47 U.S.C. § 153 (10).
- 12 7. Defendant is, and at all times mentioned herein was, a corporation and a
 13 “person,” as defined by 47 U.S.C. § 153 (10).
- 14 8. At all times relevant Defendant conducted business in the State of
 15 California and in the County of Los Angeles, within this judicial district.
- 16 9. On or about November of 2015, Defendant began using Plaintiff’s cellular
 17 telephone for the purpose of sending Plaintiff spam advertisements and/or
 18 promotional offers, via text message, including a text message sent to and
 19 received by Plaintiff on or about November 9, 2015.
- 20 10. On November 9, 2015, Plaintiff received a text message from Defendant
 21 that read:

22

23 Charlie is inviting you to drive with Uber! Sign up now and
 24 get up to \$300 when you start driving: <http://ubr.to/2Wli7Ky>

- 25
- 26 11. The text message did not include an opt-out clause.
- 27 12. The text message was sent from phone number 1 (205)-831-0335.
- 28

1 13. The text message was sent to Plaintiff's cellular telephone number (310)
2 339-1519.

3 14. At a later time on November 9, 2015, Plaintiff received a second text
4 message from Defendant that read:

5
6 Charlie is inviting you to drive with Uber! Sign up now and get
7 up to \$300 when you start driving: <http://ubr.to/1OzMxRh>
8

9 15. The second text message did not include an opt-out clause.

10 16. The second text message was sent from phone number 1 (205)-831-0335.

11 17. The second text message was sent to Plaintiff's cellular telephone number
12 (310) 339-1519.

13 18. A screenshot of the two November 9, 2015 text messages is enclosed for the
14 record (See "Exhibit A").

15 19. In total, Plaintiff received 2 texts from Defendant from phone number 1
16 (205)-831-0335.

17 20. When dialing back the number above, one is greeted with an automated
18 voice that states "Uber does not accept phone calls at this time." The call
19 then is automatically disconnected. Such an automated response is
20 indicative of technology that constitutes an "automatic telephone dialing
21 system," ("ATDS") as defined by 47 U.S.C. § 227 (a)(1) as prohibited by
22 47 U.S.C. § 227 (b)(1)(A).
23

24 21. Prior to November 9, 2015, Plaintiff had never engaged with Defendant to
25 be a potential driver nor had Plaintiff ever requested Defendant to send auto
26 texts for that purpose.
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- 1 22. The text messages placed to Plaintiff's cellular telephone were placed via an
2 "automatic telephone dialing system," ("ATDS") as defined by 47 U.S.C. §
3 227 (a)(1) as prohibited by 47 U.S.C. § 227 (b)(1)(A).
- 4 23. The telephone number that Defendant, or its agent messaged was assigned
5 to a cellular telephone service for which Plaintiff incurs a charge for
6 incoming calls pursuant to 47 U.S.C. § 227 (b)(1).
- 7 24. These telephone calls constituted calls that were not for emergency
8 purposes as defined by 47 U.S.C. § 227 (b)(1)(A)(i).
- 9 25. As of November 9, 2015, Plaintiff did not provide Defendant or its agents
10 with prior express consent to receive unsolicited text messages, pursuant to
11 47 U.S.C. § 227 (b)(1)(A).
- 12 26. These messages by Defendant, or its agents, violated 47 U.S.C. § 227(b)(1).

14 **CLASS ACTION ALLEGATIONS**

- 15 27. Plaintiff brings this action on behalf of herself and on behalf of and all
16 others similarly situated ("the Class").
- 17 28. Plaintiff represents, and is a member of the Class, consisting of all persons
18 within the United States who received any unsolicited text messages and/or
19 any other unsolicited text messages from Defendant without prior express
20 consent.
- 21 29. Defendant and its employees or agents are excluded from the Class.
22 Plaintiff does not know the number of members in the Class, but believes
23 the Class members number in the tens of thousands, if not more. Thus, this
24 matter should be certified as a Class action to assist in the expeditious
25 litigation of this matter.
- 26 30. Plaintiff and members of the Class were harmed by the acts of Defendant in
27 at least the following ways: Defendant, either directly or through its agents,
28 illegally contacted Plaintiff and the Class members via their cellular

1 telephones by using an unsolicited text message, thereby causing Plaintiff
2 and the Class members to incur certain cellular telephone charges or
3 reduced cellular telephone time for which Plaintiff and the Class members
4 previously paid, and invading the privacy of said Plaintiff and the Class
5 members. Plaintiff and the Class members were damaged thereby.

6 31. This suit seeks only damages and injunctive relief for recovery of economic
7 injury on behalf of the Class, and it expressly is not intended to request any
8 recovery for personal injury and claims related thereto. Plaintiff reserves
9 the right to expand the Class definition to seek recovery on behalf of
10 additional persons as warranted as facts are learned in further investigation
11 and discovery.

12 32. The joinder of the Class members is impractical and the disposition of their
13 claims in the Class action will provide substantial benefits both to the
14 parties and to the court. The Class can be identified through Defendant's
15 records or Defendant's agents' records.

16 33. There is a well-defined community of interest in the questions of law and
17 fact involved affecting the parties to be represented. The questions of law
18 and fact to the Class predominate over questions which may affect
19 individual Class members, including the following:
20

- 21 a) Whether, within the four years prior to the filing of this Complaint,
22 Defendant placed any unsolicited text messages (other than a text
23 message made for emergency purposes or made with the prior
24 express consent of the called party) to a Class member using any
25 automatic telephone dialing and/or texting system to any telephone
26 number assigned to a cellular telephone service;
27
28 b) Whether Plaintiff and the Class members were damaged thereby, and
the extent of damages for such violation; and

1 c) Whether Defendant should be enjoined from engaging in such
2 conduct in the future.

3 28. As a person that received at least one unsolicited text message without
4 Plaintiff's prior express consent, Plaintiff is asserting claims that are typical
5 of the Class. Plaintiff will fairly and adequately represent and protect the
6 interests of the Class in that Plaintiff has no interests antagonistic to any
7 member of the Class.

8 29. Plaintiff and the members of the Class have all suffered irreparable harm as
9 a result of the Defendant's unlawful and wrongful conduct. Absent a class
10 action, the Class will continue to face the potential for irreparable harm. In
11 addition, these violations of law will be allowed to proceed without remedy
12 and Defendant will likely continue such illegal conduct. Because of the size
13 of the individual Class member's claims, few, if any, Class members could
14 afford to seek legal redress for the wrongs complained of herein.

15 30. Plaintiff has retained counsel experienced in handling class action claims
16 and claims involving violations of the Telephone Consumer Protection Act.

17 31. A class action is a superior method for the fair and efficient adjudication of
18 this controversy. Class-wide damages are essential to induce Defendant to
19 comply with federal law. The interest of Class members in individually
20 controlling the prosecution of separate claims against Defendant is small
21 because the maximum statutory damages in an individual action for
22 violation of privacy are minimal. Management of these claims is likely to
23 present significantly fewer difficulties than those presented in many class
24 claims.

25 32. Defendant has acted on grounds generally applicable to the Class, thereby
26 making appropriate final injunctive relief and corresponding declaratory
27 relief with respect to the Class as a whole.
28

**FIRST CAUSE OF ACTION
NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER
PROTECTION ACT
47 U.S.C. § 227 ET SEQ.**

33. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

34. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

35. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et seq, Plaintiff and The Class are entitled to an award of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

36. Plaintiff and the Class are also entitled to and seek injunctive relief prohibiting such conduct in the future.

**SECOND CAUSE OF ACTION
KNOWING AND/OR WILLFUL VIOLATIONS OF THE
TELEPHONE CONSUMER PROTECTION ACT
47 U.S.C. § 227 ET SEQ.**

37. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

38. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

39. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227 et seq, Plaintiff and The Class are entitled to an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(C).

40. Plaintiff and the Class are also entitled to and seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully requests the Court grant Plaintiff and The Class members the following relief against Defendant:

FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATIONS OF THE TCPA, 47 U.S.C. § 227 ET SEQ.

41. As a result of Defendant's negligent violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for herself and each Class member \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

42. Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.

43. Any other relief the Court may deem just and proper.

SECOND CAUSE OF ACTION FOR KNOWING AND/OR WILLFUL VIOLATIONS OF THE TCPA, 47 U.S.C. § 227 ET SEQ.

44. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for herself and each Class member \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(C).

45. Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.

46. Any other relief the Court may deem just and proper.

TRIAL BY JURY

47. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiffs are entitled to, and demand, a trial by jury.

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3 Respectfully submitted this 4th day of March, 2016.
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6 By: s/Todd M. Friedman
7 Todd M. Friedman, Esq.
8 Law Offices of Todd M. Friedman, P.C.
9 Attorney for Plaintiff
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EXHIBIT A

< Messages (217) +1 (205) 831-0335 Details

Text Message
Mon, Nov 9, 3:27 AM

Charlie is inviting you to drive with Uber! Sign up now and get up to \$300 when you start driving: <http://ubr.to/1Wli7Ky>

Mon, Nov 9, 10:44 AM

Charlie is inviting you to drive with Uber! Sign up now and get up to \$300 when you start driving: <http://ubr.to/1OzMXRh>



Text Message

Send